had a devastating effect on the voice messaging marketplace in Georgia. While the Commission overturned the Georgia PSC on jurisdictional grounds, it later concluded that BellSouth had, in fact, engaged in unlawful behavior.[38] BellSouth's behavior in Georgia was particularly egregious because it had engaged in, and been caught at, the same practices in Florida. Thus, BellSouth could not even claim that it had not been on notice that regulators would be concerned about its activities.

BellSouth attempts to address these concerns in its brief in this proceeding by arguing, in effect, that it didn't do anything wrong. In reality, three different regulatory agencies reviewed BellSouth's actions, and it was evident in all three cases that BellSouth had acted in an anticompetitive fashion.[39] Those separate conclusions by independent regulatory agencies demonstrate that BellSouth plainly engaged in anticompetitive behavior when it introduced MemoryCall in its region.

The concerns raised by BellSouth's MemoryCall activities are heightened by BellSouth's effort to convince the Commission to permit exactly the sort of marketing that the Commission condemned in the *Computer III Remand Order*. Remarkably, BellSouth asks the Commission to permit it to engage in a sales pitch for long distance service before determining whether a local telephone service customer has a preference for a long distance

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[38] *See* Computer III Remand Proceedings, 6 FCC Rcd 7571; 7613-4 (1991).

[39] BellSouth's brief argues that the Commission should give little weight to discussions of MemoryCall because the Commission, in defending its decision to preempt the Georgia PSC, suggested that there was doubt as to the correctness of the Georgia PSC's findings. BellSouth Brief at 98 n. 62. BellSouth neglects to mention that the Commission later held, in the *Computer III Remand Order,* that BellSouth had engaged in unlawful behavior.

carrier.[40] Just as with MemoryCall, BellSouth hopes to use its position as the gatekeeper for local telephone service to its advantage in a related market. It could do so in the case of MemoryCall because all voice messaging subscribers need to purchase call forwarding-variable. It can do so in the case of long distance because all new telephone subscribers need to designate a preferred interexchange carrier.

BellSouth's long distance unhooking proposal demonstrates that it has learned nothing from the MemoryCall experience (except, perhaps, the best way to exploit a bottleneck monopoly). Thus, it is apparent that the Commission cannot trust BellSouth any more today than it could when MemoryCall was introduced. This fact militates against grant of BellSouth's application and, at a minimum, requires additional safeguards beyond those specified in Section 272 before BellSouth can be permitted to provide long distance service in South Carolina.

B. BellSouth Has Both the Propensity and the Ability to Engage in Anticompetitive Behavior.

While the MemoryCall experience is telling, it is not the only evidence that BellSouth has the intention and the ability to leverage its local monopoly in the long distance marketplace. BellSouth has demonstrated, with word and deed, that the risks of anticompetitive behavior are significant.

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[40] BellSouth Brief at 63-65. Even while pleading for this relief, BellSouth does admit that it is asking the Commission to change a previous determination that such sales pitches are improper.

BellSouth's propensity for anticompetitive behavior is made obvious by its application. In addition to proposing to unhook long distance customers, BellSouth announces that it does not intend to comply with the Commission's Section 271 requirements as outlined in the *Michigan Order*.[41] Even more brazenly, BellSouth has unilaterally decided that it will not pay terminating compensation for calls to a disfavored class of end users, service providers. BellSouth's attitude in taking these positions – that it, not the Commission, is entitled to decide the contours of local competition in South Carolina – is enough to render it unsuitable for Section 271 relief.

At the same time, the Commission must recognize that BellSouth will have ample opportunity to act on its anticompetitive intentions. While BellSouth claims that such actions are impossible, history demonstrates otherwise. As MemoryCall and the Commission's own efforts to develop long distance competition demonstrate, it often is difficult to detect anticompetitive behavior, which reduces the risk to the Bell company that engages in that activity. Moreover, there are many relatively subtle ways to disadvantage a competitor, most of which fall far short of refusing service or degrading the service provided to competitors. For instance, in the case of MemoryCall, BellSouth simply designed a platform in its telephone network that would work with MemoryCall but not with competing voice mail services. In that case, BellSouth also decided that it would not permit voice mail providers to order services on behalf of their customers, while MemoryCall and the accompanying

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[41] BellSouth Brief at 20.

services could be ordered with one telephone call.[42] BellSouth could make the same sorts of decisions in ways that benefit its long distance affiliate and, given its history, the Commission must determine that BellSouth is likely to do so. Indeed, as the Commission recently recognized that many of the safeguards relied upon by BellSouth in its application were independent to protect against anticompetitive behavior by ILFCs in the CMRS marketplace.[43] There is little reason to believe those safeguards will be any more effective in the long distance market. In this light, the Commission should be particularly wary of the consequences of improvidently granting this or any other Section 271 application. Because the risks to local telephone competition are great, it could be far more dangerous to permit a Bell company to enter the long distance market prematurely than to somewhat delay that entry until it is certain that the public interest will be served.

Indeed, experience shows that ILECs that provide long distance service are the most resistant to the development of local competition and the most likely to leverage their monopolies successfully. It is no coincidence, for instance, that GTE has led the efforts to overturn the Commission's rules and has filed a dizzying array of lawsuits challenging arbitration decisions. Southern New England Telephone, which long has been able to

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[42] This decision had two impacts. First, it facilitated unhooking. Second, if a voice mail provider decided to order related telecommunications services on behalf of a customer, the voice mail provider, not the customer, was liable for the charges for the related service. MemoryCall did not have to shoulder that potential liability.

[43] Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order, WT. Dkt. No. 96-162, FCC 97-352 (rel. Oct. 3, 1997).

provide long distance service, also has been notably resistant to competition, both at the Commission and before its state regulator. The Commission cannot risk having the Bell companies, which now comply only grudgingly with the local competition requirements of the Communications Act, losing all incentive to do so. Moreover, because it is unlikely in the extreme that a Section 271 authorization, once granted, will be revoked, the Commission cannot rely on its revocation authority to discipline recalcitrant Bell companies.

V. CONCLUSION

For all these reasons, Vanguard Cellular Systems, Inc., respectfully requests that the Commission act in accordance with these comments in this proceeding.

Respectfully submitted,

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October 20, 1997

Certificate of Service

I hereby certify that on this 23rd day of October, 1997, I caused copies of the corrected version of the Comments of Vanguard Cellular Systems, Inc. to be served upon the parties on the attached list via first class mail or hand delivery:

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